

SERIAL NO. 09/210,472**DOCKET NO. 1399.1001**

and address all traversals as well as all evidence. This requirement is in addition to any repetition of a previously held position and is required to allow the applicant a chance to review the Examiner's position as to these arguments and to clarify the record for appeal. Additionally and as further noted in MPEP 707.07(f), a failure of the Examiner to address the applicant's traversals can be deemed a failure to rebut these arguments so as to admit that the arguments have overcome the rejection. At the very least, the failure to address the applicant's traversals would render the Examiner's decision to again reject the claims arbitrary and capricious and invalid under the Administrative Procedures Act, 5 U.S.C. § 706, the standard under which such rejections are reviewed in view of Dickinson v. Zurko, 527 U.S. 150, 50 USPQ2d 1930 (1999).

It is respectfully submitted that the Advisory Action does not address the arguments presented in the Response or the evidence filed August 10, 2004. Since the Advisory Action does not meet the above standard, it is respectfully requested that neither the Advisory Action nor the Final Office Action of April 13, 2004 meet the above requirements and should be withdrawn, and that a new Office Action or Notice of Allowance be issued in compliance with MPEP 707.07(f).

CONCLUSION:

In accordance with the foregoing, it is respectfully submitted that all outstanding objections and rejections have been overcome and/or rendered moot. And further, that all pending claims patentably distinguish over the prior art. Thus, there being no further outstanding objections or rejections, the application is submitted as being in condition for allowance which action is earnestly solicited.

If the Examiner has any remaining issues to be addressed, it is believed that prosecution can be expedited and possibly concluded by the Examiner contacting the undersigned attorney for a telephone interview to discuss any such remaining issues.

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If there are any additional fees associated with the filing of this Response, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted via facsimile to: Commissioner for Patents,
P.O. Box 1450, Alexandria, VA 22313-1450
on 21 Oct, 2004
By: James G. McEwen
Date: 21 October 2004

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